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Nos. 768 and 769

In the Supreme Court of the United States

OCTOBER TERM 1927

No. ~~768~~ 68

FOSTER FOUNTAIN PACKING COMPANY, INC., AND SEA FOOD COMPANY,

Appellants,

versus

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC ET AL.

No. ~~769~~ 69

L. O. JOHNSON, JR., AND SEA FOOD COMPANY, TANAS HEBERT ET AL.,

Appellants,

versus

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC ET AL.

Brief for Department of Conservation of Louisiana

Appellee.

JOHN DYMOND, JR.,
A. GIFFEN LEVY,
Special Attorneys for the Department of Conservation of Louisiana.

DYMOND & LEVY,
of Counsel.

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STATEMENT OF GROUNDS OF JURISDICTION

The statement in the brief of Appellants is adopted, and shows, we submit, that this court has jurisdiction of these appeals.

STATEMENT OF FACTS

The legislative acts of Louisiana which are the subject of this litigation are the Shrimp and Oyster Acts, being Acts 103 and 258, respectively, of 1926. (Records pp. 2).

The sections of these laws which are complained of have been printed in Appellants' brief. There are, however, additional facts of record which have not, we think, been sufficiently stated.

Shrimp Heads and Hulls and Oyster Shells Are Important and Valuable Natural Resources.

Appellants have sought to minimize the importance and extent of the conservation and use in Louisiana of its natural resources in the matter of the heads and hulls of shrimp and the shells of oysters.

It was shown by the State of Louisiana that "large use is being made in the State of Louisiana of the oyster shells gathered from the waters of said state. There are in the parish of St. Mary, at Berwick and at Morgan City, Louisiana, two large shell crushing factories, one at each place, making chicken feed out of oyster shells. There is another factory that has been erected on the Hays Canal in Plaquemines Parish, which is not yet in operation, but it is expected will shortly be put in operation.

"Large use of oyster shells for road building and ballast purposes is being made also of the oyster shells from Louisiana waters."

(See Record No. 769, pp. 86, 87).

It is also shown that "There is great use made in Louisiana of oyster shells and this use is increasing. They are used for chicken feed when ground, and the demand for this is larger than the present supply. There is one large factory at Berwick, La., and another at Morgan City, La., and there is a factory just completed in Plaquemines Par-

ish on the west bank of the Mississippi River. Wherever oyster shells are available they are largely used for road building, and they can be used for fertilizer when converted into lime. One of the most important uses for oyster shells is as cultch where the shells are returned to the waters for the purpose of the young oyster spat setting theron for propagation purposes, and vast quantities are used for this purpose. Where the Louisiana reefs are depleted of the oysters by the fishermen who remove the oysters in the shell beyond the state, these shells never come back to Louisiana, and there is nothing done to develop the reefs or keep them producing.

"Oyster shells are largely used for railroad track ballasting on account of the soft, alluvial character of the Louisiana soil."

(See Record 769, pp. 88, 89).

The proof in the matter of the use of shrimp hulls and heads is equally ample and is found in Record No. 768 at pages 117 et seq.

It is shown that Dunbar, Dukate Company, Inc., operates at Westwego, La., an extensive plant for the drying of such shrimp heads and hulls, and photographs very illuminative of the extent of such plant are of record.

(Record No. 768, pp. 117, 118). These photographs are reproduced in an appendix to this brief.

The affidavit of C. F. Greiner establishes the extent to which another Louisiana factory utilizes these natural resources which otherwise are wasted and indeed become an unsanitary menace to health. (Record No. 768, p. 125).

The affidavit of R. L. Colson establishes that there are in Louisiana twelve plants for drying shrimp heads and hulls and only one in Mississippi, and shows that these heads and hulls are a valuable fertilizer supply. (Record No. 768, pp. 127, 128).

The affidavits of Jas. V. Dunbar and L. H. Jastremski are to the same effect. (Record No. 768, pp. 128 to 132 inclusive).

Shrimp and Oyster Laws Impartially Administered

Appellants would have the Court believe that the records show that the shrimp and oyster laws in question are so administered that they become unconstitutionally discriminatory, in that Louisiana citizens are permitted to violate the acts and to ship in interstate commerce oysters in the shells and shrimp with heads and hulls.

The records do not support the contention.

The affidavit of Percy Viosca, Jr., Director of the Fisheries Division of the Department of Conservation of Louisiana, establishes (Record 768, pages 39 to 53, inclusive):

That he is an expert biologist and an authority on shrimp, and that the portion of the shrimp act under discussion which pertains to living shrimp in Louisiana waters is based upon affiant's scientific study. He further states:

"Affiant ascribes the abundance of common salt water shrimp in Louisiana to two factors: (1) Mud bottoms of alluvial origin, which is their favorite habitat and in which they can conceal themselves from their enemies by burying themselves, since they do not live amongst vegetation as do most other species of shrimp; and (2) to the abundance of the chief food of immature shrimp, which consists mainly of roots, stems and leaves of salt marsh grasses, which are constantly washed into the lakes and bays of our salty marshy country by the waves and by receding tides.

"The chief purpose of the present Louisiana Shrimp Law is to conserve these immature shrimp until they reach the marketable size, as large quantities of them are sometimes

destroyed illegally before they reach the size of economic value."

On the subject of the enforcement of that part of the shrimp act which prohibits the shipping of whole shrimp out of Louisiana, this witness states (Record 768, pp. 40, 41):

"Affiant avers that as the head of the Fisheries Division of the Conservation Department he is prepared to state of his own knowledge that there is no evidence in possession of the Department of Conservation coming through its agents, or otherwise, which indicates that the shipments of shrimp procured from the waters of the State of Louisiana have been shipped outside of the State without first removing the heads and hulls therefrom and especially since Act 103 of 1926 became effective.

"Affiant avers that the aforesaid Act 103 of 1926 does not relate to the head and hulls of shrimp caught outside of the waters of the State of Louisiana, nor beyond the three mile limit in the Gulf of Mexico; that the Conservation Department has no jurisdiction over shrimp caught in the Gulf of Mexico outside of the three mile limit, and such shrimp as may have been shipped from the State of Louisiana since the adoption of Act 103 of 1926, have, so far as affiant knows, and so far as the records of the Department of Conservation show, have been only of such shrimp as have been caught beyond the limits of the State of Louisiana and these are not the character of shrimp contemplated by the provisions of the aforesaid Act 103 of 1926.

"Affiant knows of his own knowledge that large quantities of shrimp are caught in the waters outside of the State of Louisiana at all seasons of the year, but that these shrimp are not within the jurisdiction of the Conservation Department.

"Affiant knows of his own personal knowledge that there have been no salt water shrimp caught in the waters of

Louisiana since the adoption of the aforesaid Act 103 of 1926 and shipped beyond the limits of the State of Louisiana, unless they have been so caught and so shipped in a surreptitious and illegal manner, despite the vigilant activity of the agents of the Conservation Department to detect all violators of the law; that no such shrimp is being caught and shipped to the knowledge of anyone connected with the Fisheries Division of the Department of Conservation, nor have any such shipments been permitted on appeals, affidavits or otherwise, to the knowledge of the Fisheries Division of the Department of Conservation of Louisiana."

He further states (Record 768, pp. 41, 42, 43):

"Affiant avers that there is a difference in the shape and color of the shrimp caught in inland lakes and bays of Louisiana and those caught in the open Gulf, with the exception that in periods of very low water or excessively rainy seasons, immature shrimp of the color usually found in inside waters are sometimes carried out to sea and will occasionally be found to be mixed with adult sea shrimp of different appearance.

"Affiant avers that there is no record of adult salt water shrimp ever being taken in inside waters of the State of Louisiana.

"Affiant avers that the Complainant, Foster-Fountain Company, Inc., while alleging in its Bill of Complaint that salt water shrimp have been caught in Louisiana waters and shipped with hulls and heads on beyond the limits of the State, that no evidence of such shipments have been tendered to the Department of Conservation of Louisiana; but, on the contrary, all certificates relating to the shipment of shrimp required to be filed under oath with the Conservation Department of Louisiana, have indicated and evidenced that all such shipments of shrimp have been made only after the shrimp have been picked, said certificates being identical in form with that which the Complainant, Foster-Fountain Company, Inc., has

filed with the Conservation Department of Louisiana, as of October 21, 1927, the original of which is hereto annexed and made a part hereof and is marked Exhibit 'B'.

"Affiant avers that permits are issued by the Department of Conservation to persons, firms and corporations desiring to catch salt water shrimp within the limits of the State of Louisiana and that said permit is a contract between the applicant and the State of Louisiana by which the applicant agrees that he shall comply with every provision of law, particularly Act 103 of 1926 relating to the catching, drying and packing of shrimp within the State of Louisiana, and that the Complainant, Foster-Fountain Co., Inc., has ever since the adoption of said Act 103 of 1926 filed the required applications for permission to take salt water shrimp from Louisiana waters, which aforesaid applications and permits have contained the contractual obligation referred to, the last applications and permits of the aforesaid Foster-Fountain Co., Inc., having been filed and issued as of date September 1, 1927, as evidenced by the aforesaid application of the Foster-Fountain Co., Inc., hereto attached and made a part hereof and marked Exhibits 'S'.

"Affiant further avers that identical applications and permits by the Complainant, Sea Food Company, were made by said Sea Food Company and granted by the Department of Conservation as of date September 12, 1927, as per original application hereto annexed and made a part hereof and marked Exhibit 'E'.

"Affiant avers that a similar application was made by Complainant, Foster-Fountain Co., Inc., to operate boats solely within Louisiana waters for the transportation of shrimp within the limits of Louisiana and not beyond, as evidenced by the application of the said Foster-Fountain Company, Inc., dated September 1st, 1927, a certified copy of which is hereto annexed and made a part hereof, marked Exhibits 'G' and 'H'.

"Affiant avers that he makes the foregoing declarations solely of his own knowledge and not from hearsay."

There are in evidence (see Record 768, pages 46 to 53 inclusive) as exhibits to Mr. Viosca's affidavit, copies of documents which show the extreme care which the Department of Conservation of Louisiana is taking to prevent the evasion of the law and the illegal exportation of salt water shrimp in the hull.

The oyster law is enforced with equal impartiality and vigor, as the Record 769 shows.

Dr. V. K. Irion, Commissioner of Conservation for Louisiana, states (Record No. 769, p 87):

"I am advised that there have been filed in connection with the Bill of Complaint in this matter affidavits to the effect that to my knowledge oysters in the shell are permitted to be exported from the State of Louisiana. This assertion of fact is not true. I do not deny that there may be some bootlegging in raw oysters as bootlegging is done in other articles. I have endeavored and am continuing to endeavor, through all my officers, to impartially enforce the oyster law of the State of Louisiana, and none of my officers nor do I knowingly permit any violations of the conservation laws of Louisiana."

James N. McConnell, Director of the Oyster Division of the Department of Conservation of Louisiana, states (Record No. 769, p. 88):

"I am the director of the Oyster Division of the Department of Conservation, and it comes within my duties to enforce the provisions of Act 258 of the Legislature of the State of Louisiana for the year 1926, known as the oyster law. * * *

"The Conservation Department of Louisiana is prepared to enforce this Louisiana law and has been enforcing it against everyone until restrained in this case by the court order."

ARGUMENT

Summary.

It is proposed to show the constitutionality of the statutes in question by establishing the following propositions:

1. The State of Louisiana owns in its sovereign capacity for the benefit of its own people tide-water bottoms and the beds of navigable streams within her territorial jurisdiction together with all of the natural oyster reefs and the shrimp to be found upon those bottoms or in the waters above them.

   McCready vs. Virginia, 94 U. S., 391;
   Manchester vs. Massachusetts, 139 U. S., 240;
   Geer vs. Connecticut, 161 U. S., 519;
   Lacoste vs. Department of Conservation, 263 U. S., 545.

2. Because of such ownership, and in the exercise of its police power, the State may regulate and control the taking, subsequent use, and property rights that may be acquired in such oysters and shrimp.

   ib.

3. The State may grant to its own citizens the right to take such oysters and shrimp, and deny the right to citizens of other States.

   McCready vs. Virginia, 94 U. S., 391.

4. A State statute providing that only citizens, firms or corporations possessing adequate equipment for conserving shrimp and oysters may take them from waters of the State is not violative of the 14th Amendment.

   Lacoste vs. Department of Conservation, 263 U. S., 545.

5. A statute prohibiting oysters and shrimp from being exported from the State until the hulls and shells shall have

been removed is not void as a regulation of interstate commerce.

Geer vs. Connecticut, 161 U. S., 519.

6. The State's power to regulate and condition the manner of reducing shrimp and oysters to private ownership is not destroyed by the fact that it is contemplated that such private property will ultimately move in interstate commerce.

Lacoste vs. Department of Conservation, 263 U. S., 545.

7. The asserted right to take and deal with natural reef oysters and salt water shrimp and to contract with relation thereto, without reference to a state law regulating the reduction of such wild life to private ownership, is not a property right, and is not protected by the 14th Amendment to the Constitution.

Geer vs. Connecticut, 161 U. S., 519;
Barbier vs. Connolly, 113 U. S., 27;
N. O. vs. N. O. Waterworks Co., 142 U. S., 79.
Lacoste vs. Department of Conservation, 263 U. S., 545;

8. Proof of violations of a prohibitory law does not even tend to show the unconstitutionality of that law as a denial of equal protection of the law, or that the State should be enjoined from enforcing such statute.

Mackay vs. Little Rock, 250 U. S., 94.

9. The grant to a corporation of a charter does not exempt it from the operation of the police power of the state, nor preclude the state from enacting laws reasonably regulating the corporation's powers, the use of its property and the conduct of its business as the public good may require.

12 Corpus Juris, 1038;
Texas, etc., R. R. vs. Miller, 221 U. S., 408.

FOREWORD

MAY IT PLEASE THE COURT:

The historical background of these cases is graphically portrayed in the very extended consideration given the whole subject matter by the United States Supreme Court in Louisiana vs. Mississippi (202 U. S. 1). That case arose out of these very fishery disputes. The Supreme Court found that a condition approximating civil war had arisen out of the boundary dispute and the efforts of the two states seeking by legislation to regulate the fisheries.

With this opinion in mind, the instant cases appear obviously to be a prolongation of the effort of the citizens of Mississippi to hold what they took during the many years of prolonged dispute and litigation. It was during this period that their canning industry was developed, whereby they deprived the citizens of Louisiana of the only substantial benefit that could come to them by the Supreme Court's settlement of the boundary dispute, which gave Louisiana title to all of the fisheries on the St. Bernard Peninsula, up to and including Isle au Pitre.

This peninsula projecting across the southern extremity of Mississippi Sound and almost entirely across Mississippi's southern coast line, parallel to it some eighteen miles distant, rich in wild life and sea food, accounts for the development of the canning industry at Biloxi. The present value and prosperity of Biloxi, so meticulously and sedulously detailed in the affidavits supporting the bill of complaint, reflect the effect of its successful efforts thus far.

Strictly speaking these facts are irrelevant and immaterial to the Federal questions involved. We might well remove from consideration all of the references to the differences in climatic conditions in favor of Biloxi, which are after all differ-

ences of geography, or rather of topography, than of climate. Even if this were not so, the record clearly manifests that the defendants believe just as firmly in the possible industrial development of Slidell and other Louisiana points in St. Tammany, St. Bernard, Plaquemines and Terrebonne parishes, which will draw after it the necessary picture shows, other amusements and facilities necessary to make the laboring population remain constant as residents of their place of employment.

We proceed to a consideration of the constitutional questions involved.

I

The statutes under consideration, Acts 103 and 258 adopted by the Legislature of Louisiana in 1926, which are referred to respectively as the Shrimp and Oyster laws, are intended to conserve to the people of Louisiana their very valuable natural resources in shrimp and oysters.

In the first Section of each act, the State of Louisiana has declared and asserted that sovereign control and proprietorship over natural wild life which this court has so unmistakably declared belong to the States.

We quote these sections:

Act 103 of 1926.

> "Section 1. Be it enacted by the Legislature of Louisiana, That all salt water shrimp existing in the waters of this State, and the hulls and all parts of said salt water shrimp shall be and are hereby declared to be the property of the State; until the title thereto shall be divested in the manner and form herein authorized and shall be under the exclusive control of the Department of Conservation of the State of Louisiana, until the right of private ownership shall vest therein as herein pro-

vided, and that no person, firm or corporation shall catch or have in their possession, living or dead, any salt water shrimp, or parts thereof, or purchase, sell or offer for sale, any such shrimp or parts thereof, after same have been caught except as otherwise permitted herein."

Act 258 of 1926.

"Section 1. Be it enacted by the Legislature of Louisiana, That all beds and bottom of rivers, streams, bayous, lagoons, lakes, bays, sounds and inlets bordering on, or connecting with the Gulf of Mexico, in this State, and that part of the waters of the Gulf of Mexico, within the territorial jurisdiction of the State of Louisiana, including all oysters and other shell fish and parts thereof, grown thereon, either naturally or cultivated, and all oysters in the shells after the same shall have been caught or taken therefrom, shall be, continue and remain, the property of the State of Louisiana, until the title thereto shall be divested in the manner and form herein authorized; and shall be under the exclusive control of the Department of Conservation of the State of Louisiana until the right of private ownership shall vest therein, as herein provided.

"Nothing in this Act shall be so construed as affecting in any way the leasing of said waters for mineral purposes under the provisions of Act No. 30 of the Legislature of 1915, providing that if the mineral rights on any water bottom previously leased for oyster culture are granted by the State it shall be done only with the written consent previously obtained of the lessee of such water bottoms for oyster culture purposes, or by previous compensation, of adequate amount, paid to said oyster lessee by said mineral lessee for any and all damages sustained by said oyster lessee.

"No grant, sale or conveyance of the lands forming the bottoms of water shall hereafter be made by the Register of the State Land Office, or by any other official, or by any subordinate political corporation. The rights of the owners or occupants of lands on the shores of any of the waters hereinbefore described shall extend to the ordi-

nary low mark only and no one shall own in fee simple any bottoms of lands, covering the bottoms of water hereinbefore described."

It is submitted that Louisiana's right to make these declarations of control and ownership of these natural resources is undeniable.

Smith vs. Maryland, 59 U. S., 270; 15 L. Ed., 269.

In 1855, passing upon the constitutionality of a statute of Maryland penalizing the taking of oysters in any other manner than designated by the statute, this Court held the act to be constitutional, and said:

> "Whatever soil below low water mark is the subject of exclusive propriety and ownership belongs to the state on whose maritime border and within whose territory it lies, subject to any lawful grants of that soil by the State, or the sovereign power which governed its territory before the Declaration of Independence.
>
> *"Pollard's Lessee vs. Hagan,* 3 How. 212; *Martin vs. Waddell,* 16 Pet., 367; *Den vs. The Jersey Co.,* 15 How. 426.
>
> "But this soil is held by the State, not only subject to, but in some sense in trust for, the enjoyment of certain public rights, among which is the common liberty of taking fish, as well shell fish as floating fish. * * *
>
> **"The State holds the propriety of this soil for the conservation of the public rights of fishery thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. In other words, it may forbid all such acts as would render the public right less valuable; or destroy it altogether."**

McCready vs. Virginia, 94 U. S., 391; 24 L. Ed., 248.

In 1877, this Court epitomized the therefore more general expressions of similar purport, and held:

> "The precise question to be determined in this case is,

whether the State of Virginia can prohibit the citizens of other States from planting oysters in Ware River, a stream in that State where the tide ebbs and flows, when its own citizens have that privilege.

"The principal has long been settled in this court, that each State owns the beds of all tide-waters within its jurisdiction, unless they have been granted away. *Pollard v. Hagan*, 3 How., 212; *Smith v. Md.*, 18 How., 74 (59 U. S., XV., 270); *Mumford v. Wardwell*, 6 Wall., 436 (73 U. S., XVIII., 761); *Weber v. Comrs.* 18 Wall., 66 (85 U. S., XXI., 802). In like manner, the States own the tide-waters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its People, and the ownership is that of the People in their united sovereignty. *Martin vs. Waddell*, 16 Pet., 410. The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the State, which has consequently the right in its discretion, to appropriate its tide-waters, and their beds to be used by its People as a common for taking and cultivating fish, so far as it may be done without obstructing navigation. **Such an appropriation is, in effect, nothing more than a regulation of the use by the People of their common property. The right which the people of the State thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact, a property right, and not a mere privilege or immunity of citizenship.** * * *

"Following, then, this salutary rule, and looking only to the particular right which is here asserted, we think we may safely hold that the citizens of one State are not invested by this clause of the Constitution (Article IV., Sec. 2) with any interest in the common property of the citizens of another state. If Virginia had by law provided for the sale of its once vast public domain, and a division of the proceeds among its own people, no one, we venture to say, would contend that the citi-

zens of other States had a constitutional right to the enjoyment of this privilege of Virginia citizenship. Neither if, instead of selling, the State had appropriated the same property to be used as a common by its people for the purposes of agriculture, could the citizens of other States avail themselves of such a privilege. And the reason is obvious; the right thus granted is not a privilege or immunity of general but of special citizenship. It does not 'belong of right to the citizens of all free governments', but only to the citizens of Virginia, on account of the peculiar circumstances in which they are placed. They, and they alone, owned the property to be sold or used, and they alone had the power to dispose of it as they saw fit. **They owned it not by virtue of citizenship merely, but of citizenship and domicile united; that is to say, by virtue of a citizenship confined to that particular locality."**

Manchester vs. Massachusetts, 139 U. S., 240; 35 L. Ed., 159.

In 1891, this Court again affirmed this doctrine of State sovereignty over the tide-waters and beds of tide-waters and all fish therein and thereon and held that each state owns the tide-waters and beds of tide-waters within its jurisdiction, and that subject to the paramount right of navigation, fisheries remain under the exclusive control of the State.

Geer vs. Connecticut, 161 U. S., 519; 40 L. Ed., 793.

In 1896, Mr. Justice White of this Court confirmed this doctrine, of sovereign proprietorship in wild game, holding:

"Undoubtedly this attribute of government to control the taking of animals *ferae naturae*, which was thus recognized and enforced by the common law of England, was vested in the colonial governments, where not denied by their charters, or in conflict with grants of the royal prerogative. It is also certain that the power which the colonies thus possessed passed to the states with the separation from the mother country, and remains in them at the present day, in so far as its exercise may be not

incompatible with, or restrained by the rights conveyed to the Federal government by the Constitution. Kent, in his Commentaries, states the ownership of animals *ferae naturae* to be only that of a qualified property. 2 Kent, Com. 347. In most of the states, laws have been passed for the protection and preservation of game. We have been referred to no case where the power to so legislate has been questioned, although the books contain cases involving controversies as to the meaning of some of the statutes. * * *

"The adjudicated cases recognizing the right of the state to control and regulate the common property in game are numerous. In *McCready vs. Virginia*, 94 U. S. 395 (24:248), the power of the state of Virginia to prohibit citizens of other states from planting oysters within the tide waters of that state was upheld by this court. In *Manchester vs. Massachusetts*, 139 U. S. 240 (35:159), the authority of the state of Massachusetts to control and regulate the catching of fish within the bays of that state was also maintained. See also *Phelps vs. Racey*, 60 N. Y. 10, 19 Am. Rep. 140; *Magner vs. People*, 97 Ill. 320; *American Exp. Co. vs. People*, 133 Ill. 649, 9 L. R. A. 138; *State vs. Northern P. Exp. Co.* 58 Minn. 403; *State vs. Rodman*, 58 Minn. 393; *Ex parte Maier*, 103 Cal. 476; *Organ vs. State*, 56 Ark. 270; *Allen vs. Wyckoff*, 48 N. J. L. 93; *Roth vs. State*, 51 Ohio St. 209; *Gentile vs. State*, 29 Ind. 415; *State vs. Farrell*, 23 Mo. App. 176, and cases there cited; *State vs. Saunders* and *Territory vs. Evans, ubi supra.*

"Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the state, resulting from this common ownership, is to be exercised like all other powers of government as a trust for the benefit of the people, and not as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals as distinguished from the public good. Therefore, for the purpose of exercising this power, the state, as held by this court in *Martin vs. Waddell*, 41 U. S. 16

Pet. 410 (10:1012), represents its people, and the ownership is that of the people in their united sovereignty. The common ownership, and its resulting responsibility in the state, are thus stated in a well considered opinion of the supreme court of California: **'The wild game within a state belongs to the people in their collective sovereign capacity. It is not the subject of private ownership, except insofar as the people may elect to make it so; and they may, if they see fit, absolutely prohibit the taking of it, or any traffic and commerce in it, if deemed necessary for its protection or preservation, or the public good.'**

Ex parte Maier, ubi supra.

"The same view has been expressed by the supreme court of Minnesota as follows:

"We take it to be the correct doctrine in this country that the ownership of wild animals, so far as they are capable of ownership, is in the state, not as proprietor but in its sovereign capacity, as the representative and for the benefit of all its people in common.' *State vs. Rodman, supra.*

"The foregoing analysis of the principles upon which alone rests the right of an individual to acquire a qualified ownership in game, and the power of the state, deduced therefrom, to control such ownership for the common benefit, clearly demonstrates the validity of the statute of the state of Connecticut here in controversy."

The Abby Dodge vs. United States, 223 U. S. 166; 56 L. Ed., 390.

In 1912, this Court further emphasized the doctrine by holding that sponges growing under territorial waters of the State of Florida were subject to control by Florida and not by the United States Congress.

Gratz vs. M'Kee, 258 Fed. 335, 338.

In 1919, the U. S. Circuit Court of Appeal for the Eighth Circuit, held:

> "The elementary authorities, in our judgment, sustain the views above expressed, and seem to be in line with the statute of the state of Missouri in regard to the public waters of said state. The term 'fish' includes the different kinds of shellfish, such as oysters, clams and lobster. *Moulton vs. Libbey*, 37 Me. 472, 59 Am. Dec. 57; *Caswell vs. Johnson*, 58 Me. 164; note, 60 L. R. A. 516; 11 R. C. L. 1015. Fish, generically speaking, on account of their migratory character and want of a fixed habitat, are classified as animals *ferae naturae*. Their ownership while they are in a state of freedom is in the state, not as a proprietor, but in its sovereign capacity, as the representative and for the benefit of all its people in common, and the ownership thereof may not be claimed by any particular individuals. 11 R. C. L. 1015, 1016; *State vs. Heger*, 194 Mo. 711, 93 S. W. 252; *State vs. Weber*, 205 Mo. 36, 102 S. W. 955, 10 L. R. A. (N. S.) 1155, 120 Am. St. Rep. 715, 12 Ann. Cas. 382.
>
> "The difference in the locomotive powers of swimming fish and shellfish, however, justifies a distinction as to their ownership. In their natural state shellfish, like swimming fish, are classified as *ferae naturae*, and their ownership is vested in the state in its sovereign capacity. 19 Cyc. 988, B.; R. C. L. 1017."

Lacoste vs. Department of Conservation, 263 U. S. 545; 68 L. Ed., 437.

In 1924, this Court again affirmed the principle of state sovereignty over animals *ferae naturae* within her borders, holding:

> **"The wild animals within its borders are, so far as capable of ownership, owned by the state in its sovereign capacity for the common benefit of all of its people. Because of such ownership, and in the exercise of its police power, the state may regulate and**

> **control the taking, subsequent use, and property rights that may be acquired therein,** *Geer vs. Connecticut*, 161 U. S. 519, 528, 40 L. ed. 793, 796, 16 Sup. Ct. Rep. 600; *Ward vs. Race Horse*, 163 U. S. 504, 507, 41 L. ed. 244, 245, 16 Sup. Ct. Rep. 1076; New York ex rel. Silz vs. Hesterberg, 211 U. S. 31, 39, 53 L. ed. 75, 79, 29 Sup. Ct. Rep. 10; Patsone vs. Pennsylvania, 232 U. S. 138, 143, 58 L. ed. 539, 543, 34 Sup. Ct. Rep. 281; New York ex rel. Kennedy vs. Becker, 241 U. S. 556, 562, 60 L. ed. 1166, 1171, 36 Sup. Ct. Rep. 705; Carey vs. South Dakota, 250 U. S. 118, 63 L. ed. 886, 39 Sup. Ct. Rep. 403; State vs. Rodman, 58 Minn. 393, 400, 59 N. W. 1098."

It is not thought that appellants will seriously question the correctness of these cardinal principles of sovereign ownership and control by the State of the fish, oysters and wild game within her territorial limits; and we therefore proceed to consideration of the effect which recognition of these principles involves.

II

It follows immediately as a corollary, that because of its sovereign ownership, and also in the exercise of its inherent police power, **the State may regulate and control—nay even prevent—the taking, subsequent use and property rights that may be acquired in shrimp, oysters and other fish or game within her borders.**

The authorities above cited support this doctrine completely as quotations from the cases already made indicate.

Geer vs. Connecticut (*supra*) recognized this right of regulation and control, where it was held:

> "The adjudicated cases recognizing the right of the state to control and regulate the common property in game are numerous. In McCready vs. Virginia, 94 U. S. 395 (24:248) the power of the state of Virginia to prohibit citizens of other states from planting oysters

within the tide waters of that state was upheld by this court. In Manchester vs. Massachusetts, 139 U. S. 240 (35:159), the authority of the state of Massachusetts to control and regulate the catching of fish within the bays of that state was also maintained."

In Lacoste vs. Department of Conservation (*supra*) it was distinctly held on page 439 of the Lawyers' Edition Vol. 68:

> "The wild animals within its borders are, so far as capable of ownership, owned by the state in its sovereign capacity for the common benefit of all of its people. Because of such ownership, and in the exercise of its police power, the state may regulate and control the taking, subsequent use, and property rights that may be acquired therein."

Again at page 440 the Court held with respect to the imposition of the severance tax on the skins of animals *ferae naturae*:

> **"The legislation is a valid exertion of the police power of the state to conserve and protect wild life for the common benefit. It is within the power of the state to impose the exaction as a condition precedent to the divestiture of its title and to the acquisition of private ownership."**

Again in the Lacoste case at page 441, it is said:

> "Wild animals permitted by the state to be taken and reduced to possession on prescribed conditions may reasonably be distinguished from other classes of property. Compare Geer vs. Connecticut, 161 U. S. 519, 528, 40 L. ed. 793, 796, 16 Sup. Ct. Rep. 600; Ohio Oil Co. vs. Indiana, 177 U. S. 190, 208, 44 L. ed. 729, 738, 20 Sup. Ct. Rep. 576, 20 Mor. Min. Rep. 466. The 14th Amendment does not interfere with the proper exercise of the police power, Barbier vs. Connolly, 113 U. S. 27, 31, 28 L. ed. 923, 924, 5 Sup. Ct. Rep. 357; Mugler vs. Kansas, 123 U. S. 623, 663, 31 L. ed. 205, 211, 8 Sup. Ct. Rep. 273; Powell vs. Pennsylvania, 127 U. S. 678,

683, 32 L. ed. 253, 256, 8 Sup. Ct. Rep. 992, 1257; Re Rahrer, 140 U. S. 545, 555, 35 L. ed. 572, 574, 11 Sup. Ct. Rep. 865; Reinman vs. Little Rock, 237 U. S. 171, 177, 59 L. ed. 900, 903, 35 Sup. Ct. Rep. 511 **Protection of the wild life of the state is peculiarly within the police power, and the state has great latitude in determining what means are appropriate for its protection."**

III

The shrimp and oyster laws in question prohibit the taking of shrimp and oysters by any but residents of Louisiana, firms composed of residents and corporations domiciled in Louisiana.

Do these provisions violate the 14th Amendment as abridgment of the privileges or immunities of citizens of the United States?

We submit the answer is clearly negative.

McCready vs. Virginia, 94 U. S. 391; 24 L Ed., 248, 249, settled the precise question:

> **"Following, then, this salutary rule, and looking only to the particular right which is here asserted, we think we may safely hold that the citizens of one State are not invested by this clause of the Constitution with any interest in the common property of the citizens of another State."**

Wharton vs. Wise, 153 U. S. 155; 38 L. ed., 669, 676.

In 1894, this Court had occasion again to pass upon this issue, and held:

> "An act of that commonwealth (Virginia) approved in February, 1892, provided that if any person other than a resident of the State, 'take or catch oysters or other shell fish in any of the waters of the State, he

shall, upon conviction thereof, be fined five hundred dollars.' * * *

"The appellant, a citizen of Maryland, is under a judgment of imprisonment for not paying a fine and costs of prosecution imposed for unlawfully catching and taking oysters in the waters of Virginia in violation of its laws. **That state is the owner of the navigable waters within its limits and the lands under them, holding them in trust for the public, and authorized to pass all necessary laws for the protection of the fish therein, whether floating or shell, and the punishment of any citizens of its own or other states for taking them against its prohibitions.**

"The oyster grounds of the state are of large extent, very productive, and of great value. Pocomoke Sound is represented to have an area of 92 square miles, of which about 52 square miles consist of natural oyster rocks and beds, particularly adapted for the growth of the oyster. Many millions of oysters are the product from these rocks and beds each year. The business of taking them from the water and carrying them to the different markets of the country constitutes an extensive and profitable industry, giving occupation and support to several thousand people of the state and to their families, and furnishing an article of food extremely palatable and delicious to many thousands in other states. Great care is taken in their culture and protection, and a vigorous police of the state is maintained to prevent their unlawful removal, or any encroachment with respect to them upon the rights of the state. The preservation of the oysters and of these rocks and beds, so well and peculiarly fitted for their increase, has been for many years a matter of special interest on the part of the state, and the act under which the appellant was indicted and convicted constitutes a part of its legislation for that purpose."

The Court then disposes of the contention that by reason of a compact between Virginia and Maryland (the defendant being a citizen of that State) citizens of Maryland were granted fishery rights in Pocomoke Sound where defendant

was fishing, and held that this locality was not so included, and that the general law would apply.

The Court then said (page 678 of the Lawyers' Edition):

> "The offense charged against the appellant, and for which he was tried and convicted, was one against the State of Virginia, and not one against any of her individual citizens. It was for catching and taking oysters in her waters, which were the property of the state, against her prohibitions, he being a citizen of Maryland."

The conviction was by this Court affirmed.

The following cases illustrate the rule, and follow the doctrine announced by this Court in the cases above cited.

> "A constitutional provision conferring upon the citizens of each state all the privileges and immunities of citizens in the several states does not entitle the citizens of the several states to enjoy equal rights to take oysters in beds belonging to the citizens of a state in common, and which have never been ceded by that state to the United States." Corfield vs. Coryell, 4 Wash. C. C. 371, Fed. Cas. No. 3,230.

> "A statute for the preservation of clams and oysters, which prohibits the raking or gathering of these bivalves in any waters of the state, by anyone not a resident of six months' standing, extends to planted, as well as natural-grown, oysters; and, inasmuch as it merely prohibits foreigners from subverting the soil of the state and carrying away her property, while leaving vessels free to pass over the waters wherever they choose, is not in conflict with the United States Constitution as a regulation of foreign or interstate commerce; nor does it deny to citizens of other states any privilege or immunity of citizens of the state, **the state having the right to grant its property to whomsoever it chooses.**" * * * Haney vs. Compton, 36 N. J. L. 507.

"The state has the exclusive jurisdiction to regulate and control the fisheries in its waters, both tidal and fresh; and the right to fish is not given to citizens of other states by the Amendments to the Federal Constitution, nor is the state prohibited from discriminating against them.' State vs. Tower, 84 Me. 444, 24 Atl. 898.

"The legislature may prohibit the taking of oysters and shell fish in the public waters of the state, by citizens of other states, without infringing on the privileges and immunities of citizens of other states." State vs. Medbury, 3 R. I. 138.

"Each state owns the beds of all tide waters within its jurisdiction, and may grant to its own citizens the exclusive use of lands covered by water for raising oysters." State vs. Corson, 67 N. J. L. 178, 50 Atl. 780.

"The right of regulation and control of the fisheries by the several states in the interest of the public permits in every state legislation to secure the benefits of their public right in property to its own inhabitants. The rights, immunities, and privileges which are secured by the Constitution of the United States to the inhabitants of the several states do not include, in favor of the inhabitants of any state, rights in the common property of the inhabitants of the other states." Com. vs. Hilton, 174 Mass. 29, 45 L. R. A. 475, 54 N. E. 362.

"The legislature may discriminate between residents and non-residents in the right to use the waters of the state for planting and fishing for oysters. People vs. Lowndes, 130 N. Y. 455, 29 N. E. 751, Reversing 55 Hun, 469, 8 N. Y. Supp. 908.

Lubetich vs. Pollock, 6 Fed. (2d.) 237.

In the late case of *Lubetich vs. Pollock*, 1925, the United States District Court for the Western District of Washington held:

"A state owns the food fish in the waters over which it has jurisdiction, as the common property of its citi-

zens, and aliens and non-residents of the state may be constitutionally denied the right to take fish within its borders."

"A state, in prohibiting aliens from fishing in its waters, either for themselves or as employees of citizens, is not denying them their constitutional right to engage in a lawful occupation, or their employers the right to contract with whom they please, since it is dealing with its own property, as to which it may lawfully make regulations governing its own citizens as well as others."

IV

A state statute providing that only citizens, firms or corporations possessing adequate equipment for conserving shrimp and oysters may take them from the waters of the state is not violative of the 14th Amendment.

Section 4 of the Shrimp Act and Section 2 of the Oyster Act provide that only residents of Louisiana, firms composed of such residents, and Louisiana Corporations may lawfully take shrimp or oysters from Louisiana waters.

The constitutionality of this part of these sections has been discussed under point —III—, supra. Appellants argue that these sections further limit the taking of such oysters and shrimp to such Louisiana residents, firms and corporations as operate a canning or packing factory or drying platform for shrimp in Louisiana, or as have their oyster factory or shucking plant or place of business in Louisiana.

Appellants contend that these sections are unconstitutional as a denial of the equal protection of the law, and as an unwarranted discrimination.

It will be noticed that the provisions affect only Louisiana persons (including Louisiana firms and corporations as persons).

It is submitted that these oyster and shrimp acts are statutes designed to conserve to the people of Louisiana the full benefit of the State's natural resources in shrimp and oysters, and that therefore the appropriate means for protecting such natural resources are of broad scope.

Lacoste vs. Department of Conservation, 263 U. S. 545; 68 L. Ed., 437, holds on page 552:

> **"Protection of the wild life of the State is peculiarly within the police power; and the State has great latitude in determining what means are appropriate for its protection."**

It is primarily submitted that no distinction whatever is made in the statutes under consideration between individuals and corporations; they are on a parity as a mere reading of the acts will show. The takers of shrimp and oysters, whether natural persons or corporations, are treated alike, and this disposes of part of appellants' contention in this regard.

None of the cases cited by appellants in their brief on this subject involves a consideration of means adopted by a State to protect its wild life or affecting public property, and these cases, are, we submit, not persuasive on the question of the validity *vel non* of the regulations here involved.

There are very different principles involved in the instant cases.

This Court has held to be constitutional, statutes excluding from employment on public works any but citizens of the State; limiting the hours of labor on public works, and the like.

Atkin vs. Kansas, 191 U. S., 207; 48 L. Ed., 148.

> "The freedom to contract guaranteed by U. S. Const. 14th Amend. is not infringed by the provisions of Kan. Gen. Stat. 1901, Secs. 3827-3829, making it a criminal offense for a contractor for a public work to permit or require an employee to perform labor upon that work in excess of eight hours each day.
>
> "The equal protection of the laws is not denied to a contractor for a public work or his employees by the provisions of Kan. Gen. Stat. 1901, Secs. 3827-3829, making it a criminal offense for such contractor to permit or require an employee to perform labor upon the work in excess of eight hours each day."

Heim vs. McCall, 239 U. S. 175; 60 L. Ed., 206.

> "Privileges and immunities of the citizens of the several states are not abridged, contrary to U. S. Const. Art. 4, Sec. 2, by the provisions of N. Y. Consol. Laws, Chap. 31, Sec. 14, that only citizens of the United States may be employed in the construction of public works by or for the state or a municipality, and that in such employment citizens of New York state must be given preference."

The reason for these decisions is that such legislation deals with the sovereign state in relation to the common property of its citizens, to which the 14th Amendment is inapplicable; the discretion of the State and the reasonableness of the provisions will not be inquired into.

We have, in the instant cases, to deal with legislation by the State providing the conditions under which it will permit the public, common property—wild life—to be reduced to possession and to become private property which may then become an article of commerce.

If the 14th Amendment applies at all to such legislation, we submit that the State is permitted wide discretionary latitude and its police power extensive scope in determining what means are appropriate for its dealing with its public property—wild life.

Lacoste vs. Department of Conservation 263 U. S., 545; 68 L. Ed., 437.

"The 14th Amendment does not require equality of taxation within the state, or prevent the laying of special or additional taxes upon defined classes of property, so long as the inequality is not based upon arbitrary distinctions. It does not prohibit state legislation imposing a severance tax upon such skins and hides, even if no similar or corresponding tax is levied upon other property of merchants. St. Louis Southwestern R. Co. vs. Arkansas, 235 U. S. 367, 59 L. ed. 273, 35 Sup. Ct. Rep. 99, and cases cited: Singer Sewing Mach. Co. vs. Brickell, 233 U. S. 304, 315, 58 L. ed. 974, 979, 34 Sup. Ct. Rep. 493; Southwestern Oil Co. vs. Texas, 217 U. S. 114, 121, 54 L. ed. 688, 692, 30 Sup. Ct. Rep. 496; Cook vs. Marshall County, 196 U. S. 261, 274, 49 L. ed. 471, 476, 25 Sup. Ct. Rep. 233. **Wild animals permitted by the state to be taken and reduced to possession on prescribed conditions may reasonably be distinguished from other classes of property.** * * *

"The 14th Amendment does not interfere with the proper exercise of the police power. * * *

"Protection of the wild life of the state is peculiarly within the police power, and the state has great latitude in determining what means are appropriate for its protection."

It is now submitted that the classification of the shrimp and oyster laws here under consideration is reasonable in effect and sound in principle, and constitutional.

The acts are conservation measures, designed and intended to preserve, conserve and protect the natural resources of Louisiana in its fisheries.

It is provided in the Shrimp act in Section 4 (Record p. 23), that the right to take shrimp shall be confined to those

equipped to convert such shrimp into food products and articles of value.

Section 5 of the Shrimp Act, last sentence of the section provides (Record p. 24):

> "It is not intended by the provisions of this Act to interfere with the fishermen securing shrimp for bait; or for home consumption or the local markets in their fresh state, **provided they are taken from the outside waters of the State;** and provided further that shrimp for bait may be secured from either the inside or outside waters of the State at any time."

The oyster act, Act 258 of 1926, in Section 2 grants a permit to take oysters to such Louisiana persons, including firms and corporations, as have a factory or shucking plant or place of business located in Louisiana, but does not confine the right to take oysters to such persons, for the following sentence of said Section 2 provides:

> "No person, firm, association or corporation, not a resident of or domiciled in this State is, or shall be, permitted to catch, take, etc."

and there is no provision that *only* persons, firms, or corporations possessing factories, shucking plants or places of business in Louisiana shall be permitted to take oysters.

It will thus be seen that the intent is to assure to the State that the persons, firms or corporations which it permits to take shrimp for commercial purposes in large quantities are possessed of such equipment as will reasonably prevent possible loss and waste of this valuable natural resource. If **persons not thus equipped be permitted to take large quantities of shrimp, they may find no factory or drying platform willing or able to take and use such shrimp, and the shrimp, being a highly perishable article, will quickly spoil and be a total loss.**

We urge that the same argument would apply even without the provisions of Section 5 of the shrimp act.

It is further submitted that the contention of unjust discrimination does not apply in the case of the oyster law, because:

(1) The act in Section 2 grants a permit to take oysters to any Louisiana person, including corporations, *having a place of business in the State*, which certainly discriminates against no class of persons.

(2) The Act does not even limit the right to take oysters to such persons as have a place of business in Louisiana.

It is further submitted that even if the oyster law did, or is construed to, limit the taking of oysters to such class of Louisiana persons as have adequate facilities for preventing the wasting of such oysters by spoiling, then the same reasons as outlined *supra* in the case of shrimp would be of equal force and applicability.

V and VI

A statute prohibiting oysters and shrimp from being exported from the state until the hulls and shells have been removed is not unconstitutional as a regulation of interstate commerce: and the question is not affected by the fact that it is contemplated that such shelled oysters and shrimp as well as the hulls and shells will ultimately move in interstate commerce.

Appellants contend that Sections 13 and 19 of the shrimp act, and Sections 3, 23 and 24 of the oyster act violate paragraph 3, subdivision VIII, Article I of the federal Constitution conferring upon Congress the exclusive power to regulate interstate commerce.

The sections of these acts in question provide:

Shrimp Act.

"Section 13. All salt water shrimp and the shells or hulls and heads of all salt water shrimp are hereby declared to be the property of the State, and the shells or hulls and heads to be valuable for use as a natural resource of the State as a fertilizer in the State; and it shall therefore and hereafter be unlawful to export from the State of Louisiana any salt water shrimp from which the shell or hull and head shall not have been removed.

"In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food product, it shall be lawful to ship unshelled shrimp from any point in the State of Louisiana to any other point in the State of Louisiana for edible consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State who shall lawfully take any shrimp from any of the waters of the State, or lawfully acquire the same, shall have a qualified interest or property in the shrimp so taken or acquired in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State; and after the edible portions of the abdomen popularly called tail meat of said shrimp shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the state in and to said shrimp tail meat and shall have the right to sell such shrimp tail meat or ship the same beyond the limit of the State, without restriction or reservation.

"It shall be the duty of all licensees operating under the Department of Conservation in the shrimp industry in this state to conserve for fertilizer purposes all shells or hulls and heads of salt water shrimp and to report monthly, on blanks to be furnished by the Department of Conservation, the quantity thereof on hand, to the Department of Conservation. It shall be unlawful to ex-

port from the State of Louisiana any raw shells or hulls and heads of salt water shrimp as they are required to be manufactured into fertilizer or used for an element in chicken feed. When the shrimp hulls or shells and heads shall have been conserved for the purposes herein stated, the right of property therein theretofore existing in the State shall pass to the lawful taker or the possessor thereof. Any person, firm or corporation violating the provisions of this section shall be liable to the penalties hereinafter imposed."

Section 19 provides punishment for violation of the Act and forfeiture of the vessel illegally transporting shrimp from the State.

Oyster Act.

Section 3. That it shall be unlawful for any person, firm or association, or corporation to ship beyond the limits of this State any oysters, caught or taken from the waters of this State, while the same are in the shells, or to export from this State any raw oyster shells. Such oyster shells are hereby declared to be the property of the State as one of its natural resources, necessary for use as cultch in the propagation and development of the oyster industry in the State in order that a valuable food supply for its citizens may be conserved and developed. Any surplus of raw oyster shells beyond the foregoing requirements may be used for road building purposes, or ground for use as chicken feed or fertilizer, or any other purposes of material benefit to the State or to its citizens. In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food product it shall be lawful to ship in the shell oysters from any point in the State of Louisiana to any other point in the State of Louisiana for consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State, who shall lawfully take any oysters from any of the waters of this State, or lawfully acquire the same, shall have a qualified interest or property in the oysters so taken in the shells, which qualified interest may be

sold or transferred to any other person, firm or corporation within the limits of the State of Louisiana; and after said oysters shall have been removed from the shell within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said oysters and shall have the right to sell such oysters or ship the same beyond the limits of the State, without restriction or reservation, and when the raw oyster shells herein described shall have been used for the purposes herein stated the right of property therein theretofore existing in the State shall pass to the lawful taker or then possessor of such oyster shells.

"In case of any infringement of the aforesaid qualified interests in the taker or possessor of oysters in the shell, said taker or possessor may, in his own name, maintain his action against the wrongdoer, as may be proper; and in case of larceny or other public offense concerning such oysters while in the hands of a lawful taker or possessor, or upon bedding grounds held by a lawful lessee, the ownership thereof shall be averred in such lessee, taker or possessor, when by law it is necessary to aver ownership. Any person, firm, association or corporation violating any of the provisions of this section shall be liable to the penalties hereinafter provided."

Sections 23 and 24 provide punishment for violation of the act and forfeiture of the vessel illegally transporting oysters from the state.

It will be noted that Section 13 of the Shrimp Act and Section 3 of the Oyster Act respectively declare the state's sovereign ownership and control over shrimp and oysters and the hulls and shells thereof, which the sections declare are valuable as natural resources,—that the shrimp heads and hulls are valuable as a fertilizer and an element in chicken feed, and the oyster shells, as cultch, as road building material and as chicken feed.

The Sections respectively grant to the lawful takers of shrimp and oysters a qualified interest or ownership only, so long as the head, hulls and shells have not been removed; and make it unlawful to ship such unshelled shrimp and oysters from the State of Louisiana.

Section 13 of the Shrimp Act provides that when the heads and hulls have been removed from the shrimp, the meat portion popularly called "tail-meat" vests absolutely in the lawful taker or possessor, and may be shipped without restriction or reservation.

Section 3 of the oyster act likewise provides that when the shells have been removed, the oysters vest absolutely in the lawful taker or possessor, and may be shipped without restriction or reservation.

These sections further provide that until the shells and hulls of the oyster and shrimp have been conserved and made into fertilizer, or chicken feed, or used for road building or similar purpose, the possessor may not send them out of the State; but that when so conserved, the "right of property therein theretofore existing in the State shall pass to the lawful taker or possessor thereof."

It is submitted that there is no unconstitutional interference with or regulation of interstate commerce disclosed.

The Commerce clause does not contemplate the fisheries within a state. The Louisiana statutes are not aimed at commerce. They contemplate the industry as distinguished from the commerce that arises out of or rather is part of the fisheries. The plain purpose of the Acts is to conserve to the citizens of Louisiana, as owners of the fisheries, the benefit of that property. The sale of shrimp and oy-

sters may be either in the raw state or in a packed or canned state. It is for the State as trustee for the people to say whether or not the shrimp and oysters may be put in commerce at all, or to what extent and under what terms title thereto may pass to buyers in its market. The power of Congress does not come into play until they are susceptible of barter, sale or exchange in commerce.

Geer vs. Connecticut, 161 U. S., 519; 40 L. ed., 793.

"The sole consequence of the provision forbidding the transportation of game killed within the state, beyond the state, is to confine the use of such game to those who own it, the people of that state. The proposition that the state may not forbid carrying it beyond her limits involves, therefore, the contention that a state cannot allow its own people the enjoyment of the benefits of the property belonging to them in common, without at the same time permitting the citizens of other states to participate in that which they do not own. It was said in the discussion at bar, although it be conceded that the state has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of its people, inasmuch as the state has here chosen to allow the people within her borders to take game, to dispose of it, and thus cause it to become an object of state commerce, as a resulting necessity such property has become the subject of interstate commerce, hence controlled by the provisions of U. S. Const. art. 1, Sec. 8. **But the errors which this argument involves are manifest It presupposes that where the killing of game and its sale within the state are allowed, it thereby becomes commerce in the legal meaning of that word. In view of the authority of the state to affix conditions to the killing and sale of game, predicated as is this power on the peculiar nature of such property and its common ownership by all the citizens of the state, it may well be doubted whether commerce is created by an authority given by a state to reduce game within its borders to possession, provided such**

game be not taken, when killed, without the jurisdiction of the state. The common ownership imports the right to keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose. The qualification which forbids its removal from the state necessarily entered into and formed part of every transaction on the subject, and deprived the mere sale or exchange of these articles of that element of freedom of contract and of full ownership which is an essential attribute of commerce. Passing, however, as we do, the decision of this question, and granting that the dealing in game killed within the state, under the provision in question, created internal state commerce, it does not follow that such internal commerce became necessarily the subject matter of interstate commerce and therefore under the control of the Constitution of the United States. The distinction between internal and external commerce and interstate commerce is marked, and has always been recognized by this court. * * *

"The fact that internal commerce may be distinct from interstate commerce destroys the whole theory upon which the argument of the plaintiff in error proceeds. **The power of the state to control the killing of and ownership in game being admitted, the commerce in game, which the state law permitted was necessarily only internal commerce since the restriction that it should not become the subject of external commerce went along with the grant and was a part of it. All ownership in game killed within the state came under this condition, which the state had the lawful authority to impose, and no contracts made in relation to such property were exempt from the law of the state consenting that such contracts be made, provided only they were confined to internal and did not extend to external commerce."**

The State of Louisiana in these Acts in effect says: I am the sovereign owner for the benefit of my people of salt water shrimp and oysters, their hulls and shells. When they are caught or taken as I prescribe, the taker acquires from me a limited and qualified ownership—he may not ship them beyond the limits of the State until he hulls and shells them, and then and in that event he becomes the absolute owner of them, they become articles of commerce and can, of course, be shipped anywhere without restriction or reservation. As to the hulls and shells of these shrimp and oysters, I grant you the right to remove them from the fish, and as they are a valuable asset, I require, as a condition precedent to ownership, that you make fertilizer or chicken food of them or use them for cultch or road building purposes, and not until then do I part with my title. When you have so conserved these hulls and shells you become owner of them, they become the subject of commerce and can, of course, be shipped anywhere.

This Court in the case of *Geer vs. Connecticut, supra*, declares that the State being a sovereign owner can do this very thing; that public things, such as wild life, form no part of interstate commerce, and never do until all conditions precedent imposed by the sovereign have been compiled with.

Lacoste vs. Department of Conservation, 263 U. S., 545 (68 L. Ed., 437).

This Court in 1924, again passed on the constitutionality of a wild life conservation statute, in which the State of Louisiana made the payment of a severance tax a condition precedent to the divestiture of the State's sovereign title in the skins of certain wild game. The Court said:

"The legislation is a valid exertion of the police

power of the state to conserve and protect wild life for the common benefit. **It is within the power of the state to impose the exaction as a condition precedent to the divestiture of its title and to the acquisition of private ownership.** Expressly, the tax is imposed upon all skins and hides taken within the state. This includes those, if any, sold for manufacture in the state as well those shipped out. **In their argument here, plaintiffs in error stated that skins and hides are not manufactured into finished products in Louisiana, and that all are shipped out of the state. But that is no objection to the tax. The state's power to tax property is not destroyed by the fact that it is intended for and will move in interstate commerce.** Such skins and hides may be taxed while in the hands of dealers before they move in interstate commerce. Coe vs. Errol, 116 U. S. 517, 525, 29 L. ed. 715, 718, 6 Sup. Ct. Rep. 475; Bacon vs. Illinois, 227 U. S. 504, 515, 516, 57 L. ed. 615, 620, 33 Sup. Ct. Rep. 299; Arkadelphia Mill. Co. vs. St. Louis Southwestern R. Co., 249 U. S. 134, 151, 63 L. ed. 517, 527, P.U.R. 1919C, 710, 39 Sup. Ct. Rep. 237. Failure to levy and enforce the tax before the skins and hides reach the dealers does not make the necessary operation and effect of the law an interference with interstate commerce. The imposition of the tax on the skins and hides while in the hands of the dealers is calculated to make certain that all will be found for taxation. No interference with interstate commerce results from the enforcement of the act. It is not repugnant to the commerce clause of the Constitution."

It will be noted that in the case of Lacoste, this Court expressed the opinion that the tax on furs and hides was imposed before the articles became subjects of commerce, and that the fact that the hides are not manufactured into finished products in the state and that all are shipped out of the state did not destroy the state's right to tax, because:

> "The state's right to tax property is not destroyed by the fact that it is intended for and will move in interstate commerce."

The identical regulations here involved were held constitutional in a well reasoned and very widely approved case by the Supreme Court of Alabama in 1892, and while not binding upon this Court, is highly persuasive.

State of Alabama vs. Harrub, 95 Ala., 176; 15 L. R. A. 761.

In this case the Supreme Court of Alabama held:

> **"If the state has the power to prohibit the exportation of its oysters absolutely, a fortiori, it may limit the shipment of such oysters to such as may have been shelled. If the Legislature sees proper, as a means to prevent the exhaustion of its oyster-beds, to grant to the takers, who can only be resident citizens of the state, or their grantees within the state, such a qualified property right in the oyster as will permit its exportation only after it is shelled, where is the authority to judicially control this discretion, or what principle of the Interstate Commerce Law is violated by such an enactment? The oyster is the absolute property of the state. It certainly has the power to prevent its becoming an article of interstate commerce. Until it becomes an article of interstate commerce Congress has no authority or control in the premises. The state, by the statute itself, expressly retains the title to the oyster, and prohibits its shipment beyond the state until shelled. Only after it is shelled does the state relinquish its title, and the grantee previously having but a qualified interest, becomes the absolute owner, and the oyster may then become an article of interstate commerce. When shelled, and the state has parted with its property rights, the state no longer interferes with the article. The owner ships it wherever he pleases and by whatsoever transportation he prefers."**

The basic reasoning supporting all of these decisions, and

which is conclusive, we submit, of the present question, is that the states may properly regulate their internal commerce, and that the constitutional inhibition of state regulation of interstate commerce does not apply to regulations of the states touching articles before they become the subject of such interstate commerce, even though it be contemplated that they will eventually so move; and that the state being the sovereign proprietor of the wild life within its borders, such wild life does not and cannot become the subject of interstate commerce until and unless each condition precedent prescribed by the State for the transfer to private ownership of the state's title has been complied with, and that until the state has thus parted with its title, it may regulate and control, in its discretion, and even forbid the game to move in interstate commerce.

The Ferrandau Case.

Appellants have indicated in brief that the Supreme Court of Louisiana has declared in the case of State of Louisiana vs. Ferrandau, 130 La., 1035; 58 So., 870, that these statutes are unconstitutional. **That case has not the remotest bearing upon the matters here under consideration.**

In the *Ferrandau* case, the Court had under consideration Sec. 1 of Act 189 of 1910 of Louisiana which provided:

> "No person, firm or corporation shall ship oysters out of this State *for canning or packing out of the State.*"

Such a provision is clearly a regulation of interstate commerce, because the statute permitted oysters to be shipped in interstate commerce for all other purposes except canning or packing.

The statute of 1910 had as clear an interference with interstate commerce as the Act of Mississippi providing (Record 768, p. 122):

> "It shall be unlawful for any person to take oysters in the shell out of the State of Mississippi by means of any transportation, *except that oysters in the shell may be shipped out of the state by express.*"

It is submitted, on the other hand, that the statutes of 1926 under consideration in these appeals do not so affect interstate commerce.

There is no discrimination; no shipment out of the state for any purpose is permitted until the conditions precedent to the surrender of the state's proprietary rights are fulfilled; then shipment may be made for all purposes.

Oil and Gas Cases.

Reference is made in appellants' brief to certain cases where this Court held unconstitutional, as interfering with interstate commerce, state statutes designed to conserve natural gas and oil.

These cases are not in point, because it is clear that oil and gas immediately upon reduction to possession, belong to the owner of the soil from which the oil or gas was obtained; whereas wild life, fish, and oysters belong to the state as proprietor in trust for all its citizens, and can be reduced to private ownership only in the manner permitted by the state.

Administration of the Shrimp and Oyster Laws.

It is charged by the Appellants that the State of Louisiana is knowingly permitting shrimp and oysters to be shipped out of the state for every purpose except packing; and that, there-

fore, as administered, the statutes under consideration are in effect an interference with interstate commerce.

It is submitted that there is no basis in fact for such contention, and this subject will be discussed in a later section of this brief, under point VIII.

Fines, Penalties and Forfeiture.

Appellants further contend that Section 19 of the shrimp law and Sections 23 and 24 of the oyster law interfere with interstate commerce.

As we have seen, these sections provide the penalties for violations of these statutes, among which penalties is that of forfeiture, after due proceedings, of the vessel illegally transporting oysters and shrimp beyond the state.

Appellants do not seem to have referred to this point after stating it, and we take it that these being the penal sections of the acts, the sections are alleged to be an interference with interstate commerce for the same reasons urged by appellants as to Sections 13 and 3 respectively, of the shrimp and oyster laws.

The penalties are not unusual, and forfeiture of the offending vessel, after hearing, is not in itself unconstitutional, as has been held by this Court.

In **Smith vs. Maryland**, 59 U. S.; 18 How. 71; 15 L. Ed., 269, it was held:

> "It is within the legislative power of the state to interrupt the voyage and inflict the forfeiture of a vessel enrolled and licensed under the laws of the United States, for disobedience, by those on board, of such law."

This Court in **Lacoste vs. Department of Conservation** (263 U. S., 545; 68 L. Ed., 437), maintained the constitution-

ality of a state statute providing forfeiture as a penalty.

This Court has held that a state statute is constitutional which provides for destruction of fish nets used in violation of law where they are of small value without even forfeiture proceedings being instituted.

See *Lawton vs. Steele*, 152 U. S. 133; 38 L. Ed. 385.

Value of Hulls and Shells.

It is contended by appellants that the heads and hulls of shrimp and the shells of oysters are not valuable natural resources, and that the retention by the State of Louisiana of their ownership is a subterfuge.

It is submitted that the record fails to bear out this contention.

In the statement of facts in the forepart of this brief we have made liberal reference to the records, which establish the great importance and value of these by-products of shrimp and oysters as a natural resource for fertilizer and feed purposes on the one hand and as cultch, road building material and the like on the other.

We have reproduced in an appendix to this brief nine views of a shrimp-hull drying plant which are exhibits to the affidavit of Stanley Arthur of the Department of Conservation (Record No. 768, pp. 117, 118), which indicate that shrimp hull drying is important.

There is no subterfuge; there is a valid protection under the police power of valuable natural resources.

It is submitted, therefore, that the Louisiana Statutes under consideration are not violative of the commerce clause of the Constitution.

VII

The asserted right to take and deal with natural reef oysters and salt water shrimp and to contract with relation thereto, without reference to a state law regulating the reduction of such wild life to private ownership, is not a property right, and is not protected by the 14th Amendment to the United States Constituion.

Appellants contend that the oyster and shrimp laws are unconstitutional as depriving them of property, that is, the right to contract, without due process of law.

It is submitted that in order to assert that a statute deprives one of property without due process, one must necessarily disclose the property right claimed to be invaded, in this instance, the right to contract.

Appellants attempt to meet this issue by claiming a right to contract to take shrimp and oysters from Louisiana waters and to deliver them in Mississippi. The Louisiana statutes forbid this until the hulls and shells have been first removed; and appellants contend that they are thus deprived of their right to freedom of contract.

It is submitted that one has no right to contract with relation to property which is public or over which a state exercises sovereign proprietorship, except in the manner and to the extent permitted by such state.

New Orleans vs. Water Works Co., 142 U. S. 79; 35 L. Ed. 943, 946.

In this case at page 946 Lawyers' Edition the Court held:

> "We think that before we can be asked to determine whether a statute has impaired the obligation of a contract, it should appear that there was a legal contract

subject to impairment, and some ground to believe that it has been impaired; and that to constitute a violation of the provision against depriving any person of his property without due process of law, it should appear that such person has a property in a particular thing of which he is alleged to have been deprived."

Barbier vs. Connolly, 113 U. S. 27; 28 L. Ed. 923, 924.

The Court in this case said:

"The 14th Amendment, in declaring that no State 'Shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoiliation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice, no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses. But neither the Amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the State, sometimes termed its 'police power,' to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."

Lacoste vs. Department of Conservation, 263 U. S., 545; 63 L. ed., 437.

In this case it was urged that the statute deprived the plaintiffs in error of property without due process. The Court held the plea to be without merit, holding:

> "Wild animals permitted by the state to be taken and reduced to possession on prescribed conditions may reasonably be distinguished from other classes of property."
>
> "The act is not repugnant to the due process or equal protection clauses of the 14th Amendment."

This Court has held to be constitutional, statutes excluding from employment on public works any but citizens of the State; limiting the hours of labor on public works, and the like; see Atkin vs. Kansas, 191 U. S., 207; 48 L. Ed., 148; Heim vs. McCall, 239 U. S. 175; 60 L. Ed., 206.

The reason for these decisions is that such legislation deals with the sovereign state in relation to the common property of its citizens, to which the 14th Amendment is inapplicable; the discretion of the State and the reasonableness of the provisions will not be inquired into.

This particular matter appears to us as elemental. It is undeniable that the State, as sovereign, owns for the benefit of its people all of the wild life within its borders, and can limit and condition the reduction thereof to private ownership. This has been argued at length with citation of appropriate authorities.

It seems equally apparent and almost axiomatic that until reduced to private ownership in the manner provided by the state, no one can possess contract rights with respect thereto which do not recognize the conditions precedent to reduction to private ownership.

Were this not so, the principle of state proprietorship in wild game would be meaningless, because, for instance, in order to evade a law of Connecticut prohibiting exportation of game birds, Mr. Geer need only have contracted with a citizen of Massachusetts to furnish him with a certain number of game birds killed in Connecticut.

Private citizens cannot contract to sell or deal in public property.

VIII

Proof of violations of a prohibitory law does not even tend to show the unconstitutionality of that law as a denial of equal protection of the law, or that the state should be enjoined from enforcing such statute.

Appellants would have the Court believe that the records show that the shrimp and oyster laws in question are so administered that they become unconstitutionally discriminatory, in that Louisiana citizens are permitted to violate the acts and to ship in interstate commerce oysters in the shells and shrimp with heads and hulls.

The records do not support the contention.

The affidavit of Percy Viosca, Director of Fisheries for Louisiana, is particularly illuminative on this subject. We have liberally quoted from it in our statement of facts in this brief and it will be found in Record 768, pages 39 to 53.

On the subject of the enforcement of that part of the shrimp act which prohibits the shipping of whole shrimp out of Louisiana, this witness states (Record 768, pp. 40, 41):

> "Affiant avers that as the head of the Fisheries Division of the Conservation Department he is prepared to state of his own knowledge that there is no evidence in

possession of the Department of Conservation coming through its agents, or otherwise, which indicates that the shipments of shrimp procured from the waters of the State of Louisiana have been shipped outside of the State without first removing the heads and hulls therefrom and especially since Act 103 of 1926 became effective.

"Affiant avers that the aforesaid Act 103 of 1926 does not relate to the head and hulls of shrimp caught outside of the waters of the State of Louisiana, nor beyond the three mile limit in the Gulf of Mexico; that the Conservation Department has no jurisdiction over shrimp caught in the Gulf of Mexico outside of the three mile limit, and such shrimp as may have been shipped from the State of Louisiana since the adoption of the Act 103 of 1926, so far as affiant knows, and so far as the records of the Department of Conservation show, have been only of such shrimp as have been caught beyond the limits of the State of Louisiana and these are not the character of shrimp contemplated by the provisions of the aforesaid Act 103 of 1926.

"Affiant knows of his own knowledge that large quantities of shrimp are caught in the waters outside of the State of Louisiana at all seasons of the year, but that these shrimp are not within the jurisdiction of the Conservation Department.

"Affiant knows of his own personal knowledge that there have been no salt water shrimp caught in the waters of Louisiana since the adoption of the aforesaid Act 103 of 1926 and shipped beyond the limits of the State of Louisiana, unless they have been so caught and so shipped in a surreptitious and illegal manner, despite the vigilant activity of the agents of the Conservation Department to detect all violators of the law; that no such shrimp is being caught and shipped to the knowledge of anyone connected with the Fisheries Division of the Department of Conservation, nor have any such shipments been permitted on appeals, affidavits or otherwise, to the knowledge of the Fisheries Division of the Department of Conservation of Louisiana."

The oyster law is enforced with equal impartiality.

Dr. V. K. Irion, Commissioner of Conservation for Louisiana, states (Record No. 769, p. 87):

> "I am advised that there have been filed in connectionwith the bill of Complaint in this matter affidavits to the effect that to my knowledge oysters in the shell are permitted to be exported from the State of Louisiana. This assertion of fact is not true. I do not deny that there may be some bootlegging in raw oysters as bootlegging is done in other articles. I have endeavored and am continuing to endeavor, through all of my officers, to impartially enforce the oyster law of the State of Louisiana, and none of my officers nor do I knowingly permit any violations of the conservation laws of Louisiana."

James N. McConnell, Director of the Oyster Division of the Louisiana Department of Conservation, testified (Record No. 769, p. 88):

> "The Conservation Department of Louisiana is prepared to enforce this Louisiana law and has been enforcing it against everyone until restrained in this case by the Court order."

It is submitted that no discrimination in the enforcement of these laws has been established, nor have the laws been knowingly permitted to be violated.

Only shrimp from which the heads and hulls have been removed and shelled oysters are permitted to be shipped out of the State; except shrimp caught outside of the three mile limit, over which Louisiana can exercise no such ownership and control as is provided in the statutes under consideration.

Our proof of these facts is convincing, and is set out in the statement of facts in this brief.

It may be true that oysters and shrimp are surreptitiously shipped and "bootlegged" out of the state in violation of the statutes; but this is done despite the effort of the authorities and without their knowledge, and is not cause to arrest the enforcement of the statutes.

To adhere to such a doctrine as appellants here stand for would be preposterous we earnestly submit. Is the Volstead Act to be enjoined because it is violated in innumerable ways by various persons?

Are state laws on gambling and kindred subjects to be held unconstitutional as violative of the 14th Amendment, because one can point out specific instances of gambling being conducted?

We submit that such is not and cannot be the law.

The leading case cited by appellants on the subject of the unconstitutionality of a statute due to knowing and willful enforcement against some persons and not against others is

Yick Wo vs. Hopkins, 118 U. S. 356; 30 L. Ed. 220.

In that case it was said at page 227:

> "Though the law itself be fair on its face and impartial in appearance, **yet if it is applied and administered by public authority with an evil eye and an unequal hand,** so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. * * *
>
> "The present cases, as shown by the facts disclosed in the record, are within this class. It appears that both petitioners have complied with every requisite, deemed by the law or by the public officers charged with its administration necessary for the protection of neighboring property from fire, or as a precaution against injury to

> the public health. No reason whatever, except the will of the supervisors, is assigned why they should not be permitted to carry on, in the accustomed manner their harmless and useful occupation, on which they depend for a livelihood. And while this consent of the supervisors is withheld from them and from two hundred others who have also petitioned, all of whom happened to be Chinese subjects, eighty others, not Chinese subjects, are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted that no reason for it exists except hostility to the race and nationalty to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is therefore illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution."

It is submitted that the discrimination in the enforcement of the statute must be willful and knowing; that good faith of the state officials will be presumed unless the contrary is clearly shown; that bad faith and willful and unfair discrimination is not established in this case by a mere disclosure of instances where shrimp and oysters have been shipped in violation of the statutes.

This Court held in 1919 in the case of

Mackay vs. Little Rock, 250 U. S., 94; 63 L. Ed., 863, 869:

> **"There was no offer to show an arbitrary and intentionally unfair discrimination in the administration of the ordinance, as in Yick Wo vs. Hopkins, 118 U. S. 356, 374."**

and this Court refused to hold the ordinance unconstitutional.

It is submitted that there are no cases establishing a different doctrine.

IX.

The grant to a corporation of a charter does not exempt it from the operation of the police power of the State, nor preclude the state from enacting laws reasonably regulating the corporation's powers, the use of its property and the conduct of its business as the public good may require.

Appellants, in a desperate attempt to find some unconstitutionality in the statutes here being considered, assert that their charters which are founded upon general laws of Louisiana are a contract between the state and the appellants whereby they have the right to export oysters.

These charters are to be found in the records, page 22 of Number 769 and page 109 of Number 768.

It will be noted that the charter of Foster, Fountain Company, Inc., gives to that corporation no right whatever which it cannot now enjoy and exercise under the shrimp and oyster laws.

The Sea Food Company is chartered to conduct the business of canning oysters and shrimp and the operation of boats to catch the same, and to import and export said articles.

It is submitted that the shrimp and oyster laws do not prevent the Sea Food Company from exercising these rights. **The acts regulate the exercise** of these rights, and, we suggest, with absolute constitutionality.

Texas & N. O. R. R. Co. vs. Miller, 221 U. S. 408; 55 L. Ed., 789, 795.

In this case, it appears that the Louisiana legislature by special statute of 1878 chartered the defendant railroad, one provision of which statute exempted said company from

liability for death of any employee even negligently caused. A subsequent statute destroyed this exemption.

The Court said on page 795 of the Lawyers' Edition:

> "The doctrine that a corporate charter is a contract which the Constitution of the United States protects against impairment by subsequent state legislation is ever limited in the area of its operation by the equally well-settled principle that a legislature can neither bargain away the police power nor in any wise withdraw from its successors the power to take appropriate measures to guard the safety, health, and morals of all who may be within their jurisdiction. Boston Beer Co. vs. Massachusetts, 97 U. S. 25, 24 L. ed. 989; Northwestern Fertilizing Co. vs. Hyde Park, 97 U. S. 659, 24 L. ed. 1036; Stone vs. Mississippi, 101 U. S. 814, 25 L. ed. 1079; Douglas vs. Kentucky, 168 U. S. 488, 42 L. ed. 553, 18 Sup. Ct. Rep. 199. In the first of these cases it was said:
>
> **" 'Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health, and property of the citizens, and to the preservation of good order and the public morals. The legislature cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, *Salus populi suprema lex*; and they are to be attained and provided for by such appropriate means as the legislative discretion may devise. That discretion can no more be bargained away than the power itself.'**
>
> "The fact that the provision in question was embodied in the statute incorporating the Louisiana company does not suffice to show that it became a part of the charter contract, for obviously nothing became a part of that contract that was not within the contracting power of the legislature. Such of the provisions of the statute as were

within that power became both a law and a contract and were within the protection of the contract clause of the Constitution, but such of them as were not within that power became a law only, and were as much subject to amendment or repeal as if they had been embodied in a separate enactment. As was said by this court in Stone vs. Mississippi, *supra*: 'It is to be kept in mind that it is not the charter which is protected, but only any contract the charter may contain.'

"The subject to which the provision in question relates is the civil liability of a railroad company for the death of its employees, resulting from its negligence. That is a matter of public concern, and not of mere private right. It is closely connected with the safety of the employees, and undoubtedly belongs to that class of subjects over which the legislature possesses a regulatory but not a contracting power. Manifestly, therefore, the charter contract did not embrace that provision and the contract clause of the Constitution did not prevent its repeal."

Probably the most exhaustive case by this Court upon this subject is **Butchers' Union Slaughterhouse vs. Crescent City Live Stock, Etc.**, 111 U. S. 746; 28 L. Ed., 585.

In that case, it is said on page 586:

"No one can examine the provisions of the Act of 1869, with the knowledge that they were accepted by the Crescent City Company, and so far acted on that a very large amount of money was expended in a vast slaughter-house and an equally extensive stock-yard and landing place, and hesitate to pronounce that in form they have all the elements of a contract on sufficient consideration.

"It admits of as little doubt that the ordinance of the City of New Orleans, under the new Constitution, impaired the supposed obligation imposed by those provisions of the State, by taking away the exclusive right of the Company granted to it for twenty-five years, which was to the Company the most valuable thing supposed to

be secured to it by the statutory contract.

"We do not think it necessary to spend time in demonstrating either of these propositions. We do not believe they will be controverted.

"The appellant, however, insists that, so far as the Act of 1869 partakes of the nature of an irrepealable contract, the Legislature exceeded its authority and it had no power to tie the hands of the Legislature in the future from legislating on that subject without being bound by the terms of the statute then enacted. This proposition presents the real point in the case.

"Let us see clearly what it is:

"It does not deny the power of that Legislature to create a corporation, with power to do the business of landing live stock and providing a place for slaughtering them in the city. It does not deny the power to locate the place where this shall be done exclusively. It does not deny even the power to give an exclusive right, for the time being to particular persons or to a corporation to provide this stock landing and to establish this slaughter-house.

"But it does deny the power of that Legislature to continue this right, so that no future Legislature nor even the same body can repeal or modify it or grant similar privileges to others. It concedes that such a law, so long as it remains on the statute-book as the latest expression of the legislative will, is a valid law and must be obeyed, which is all that was decided by this court in the *Slaughter-House Cases*. **But it asserts the right of the Legislature to repeal such a statute or to make a new one inconsistent with it, whenever, in the wisdom of such Legislature, it is for the good of the public it should be done.**

"Nor does this proposition contravene the established principle that the legislature of a State may make contracts on many subjects, which will bind it and will bind succeeding Legislatures for the time the contract has to run, so that its provisions can neither be repealed nor its

obligation impaired. The examples are numerous where this has been done and the contract upheld.

> **"The denial of this power, in the present instance, rests upon the ground that the power of the Legislature intended to be suspended is one so indispensable to the public welfare that it cannot be bargained away by contract. It is that well known but undefined power called the 'police power.'**

In Stone vs. Mississippi, 101 U. S. 814; 25 L. Ed. 1079; the whole subject is reviewed in the opinion. That was a case of a chartered lottery, whose charter was repealed by a Constitution of the State subsequently adopted. The lottery company asserted the impairment of its charter contract rights, and this Court said:

> "The question is, therefore, presented whether, in view of these facts, the Legislature of a State can, by the charter of a lottery company, defeat the will of the people authoritatively expressed, in relation to the further continuance of such business in their midst. We think it cannot. No Legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants. The supervision of both these subjects of governmental power is continuing in its nature, and they are to be dealt with as the special exigencies of the moment may require. Government is organized with a view to their preservation, and cannot divest itself of the power to provide for them. For this purpose, the legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself."

It is submitted that the statutes here are police regulations designed to protect wild life and to conserve natural resources; that no substantial rights are impaired; that even if impaired, the acts are constitutional as valid exercise of the inherent and unbarterable police power.

Furthermore, the Constitution of Louisiana of 1898 and 1913, Article 263, in effect at and prior to the incorporation

of Sea Food Company, June 27, 1913, and of Foster Fountain Co., Inc., on February 24, 1921, provided:

> **"The exercise of the police power of the State shall never be abridged nor so construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general welfare of the State."**

This constituted an inclusion in the charters themselves of a reservation by the State of Louisiana to modify the charters under its police power—a right necessarily reserved, of course, but thus affirmatively expressed.

Miller vs. New York, 82 U. S.; 15 Wall. 478; 21 L. Ed., 98.

> "The power to alter, modify or repeal an Act of incorporation, may be reserved to the State by a general law applicable to all Acts of incorporation in which case the power may be exercised whenever the charter was granted subsequently to the passage of the general law.
>
> "Where such a provision is incorporated in the charter it qualifies the grant, and the subsequent exercise of that reserved power is not an act within the prohibition of the Constitution.
>
> **"The reservation is equally valid and effectual if it exists in the Constitution of the State, or in a prior general law."**

CONCLUSION

In conclusion, we would express the thought that the shrimp and oyster laws under consideration were enacted, not as a blow aimed at the State of Mississippi and its canning industries, maintained as they have been for so long a time at the expense of the natural wealth of Louisiana; but these laws were enacted by a sovereign state conscious of its responsibility to its citizens to maintain and preserve for them and their posterity natural resources in wild life,

which might otherwise be depleted, exhausted and destroyed, as happened in the case of Maryland.

Louisiana has only the most fraternal feelings for Mississippi and its people, as is evidenced by the concluding section of each of the statutes in question granting a season within which adjustments might be made to meet the conditions imposed by the Acts—a concession, let it be stated, made during the confection of these laws to these same appellants, as the records show.

Friendly and kindly as are these feelings, however, Louisiana cannot forego the exercise of her police power in securing the welfare of her citizens and the preservation to them of their birth right.

It is respectfully submitted that the decrees should be affirmed.

JOHN DYMOND, JR.,

A. GIFFEN LEVY,

Special Attorneys for the Department of Conservation of Louisiana.

DYMOND & LEVY,
of Counsel.

APPENDIX

We reproduce herewith the affidavit of Stanley Arthur, Director of the Division of Wild Life of the Department of Conservation of Louisiana, with the photographs made exhibits thereto, the same having been sent up in original and therefore not being printed in the Record.

AFFIDAVIT OF STANLEY C. ARTHUR ON BEHALF OF DEFENDANTS

STATE OF LOUISIANA,
PARISH OF ORLEANS:

Before me, the undersigned authority, personally came and appeared Stanley C. Arthur, who being by me sworn, deposes and says:

That he is the Director of the Division of Wild Life of the Department of Conservation of the State of Louisiana; that having been directed by the Commissioner of Conservation to take certain pictures of a shrimp hulling and drying plant, to be used in the aforesaid litigation, he did proceed to the plant of the Dunbar-Dukate Co., Inc., at Westwego, Jefferson Parish, Louisiana, and he there took nine pictures of different views of the machinery and apparati incident to the drying of shrimp hulls and heads and he has attached hereto and made part hereof prints of these nine photographs so taken by him, numbered respectively, Arthur, Nos. 1 to 9, inclusive, for identification with this affidavit. These pictures indicate:

No. 1, the outside view of the hull drying apparati or drying drums and houses.

No. 2, Engine or motive power for revolving drums.

No. 3, Detail of cogs to revolving drums.

No. 4, Rear views of Revolving drums.

No. 5, Sacking Scaffold.

No. 6, Detailed view of drying shrimp hulls and heads, after being dehydrated.